

[REDACTED]
[REDACTED]
[REDACTED]
OCT 13 1993

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates that you were incorporated in [REDACTED] on [REDACTED] for the non-profit purpose of maintaining the common areas of [REDACTED] condominiums, [REDACTED], and carrying out those objectives permitted to it pursuant to [REDACTED] et seq.

The Association was formed to serve as a means through which the condominium unit owners may take action with regard to the administration, management, maintenance, repair and operation of the property.

Every person or entity who holds a legal or equitable interest in any unit of the association and has fully paid all their due assessments and charges is deemed a member in good standing.

Your income is derived from membership dues and investment income.

Your expenses are for maintenance, insurance, trash disposal, utilities, professional fees, advertising, taxes, bank charges/office, and Secretary of State fees.

All expenses of the Association incurred for the operation, maintenance, repair, replacement, cleaning, and sanitation of all common elements of the condominium, shall be charged to all unit owners as a common expense.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Date	10/6/93	10-6-93	10/7/93	10/13/93			

Section 501(c)(3) of the Internal Revenue Code provides for the exemption of organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under Code section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes if its Articles of Incorporation limit the purpose of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest. Thus to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders or the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purpose if more than an insubstantial part of its activities serve a private interest.

Revenue Ruling 74-17, published in Cumulative Bulletin 1974-1, on page 130, concerns an association formed by unit owners of a condominium housing project which was operated to provide for the management, maintenance and care of the common areas of the project. Because the essential structure of a condominium association involves ownership in common by all unit owners of common areas and the maintenance and care of private property, it was held that the organization could not be recognized as tax exempt because the activities of the association constituted providing private benefit for the unit owners.

The rights, duties, and privileges of members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property interests in the condominium.

Condominium type ownership by its very nature necessarily entails ownership in common by all unit owners of common areas or elements supportive to the individual units in a structural and/or functional sense. Thus, any maintenance or care of such common areas or elements constitutes private benefit to the individual members as opposed to promoting the common good and general welfare to the people of the community.

Based upon a review of your application for recognition of exemption, Form 1023, it is held that you are neither "organized or operated" exclusively for one or more of the purposes specific in section 501(c)(3) of the Code. You are organized and operated primarily to serve a private rather than a public purpose; the provision of services for the common benefit of your condominium unit owners. In addition, you do not provide for the charitable distribution of your assets upon dissolution. Therefore, you do not meet the organizational test of section 501(c)(3).

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination you are required to file Federal income tax returns on Form 1120.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

[REDACTED]

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Sincerely,

[REDACTED]

District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]